

Bryan Ferrand,
William Watkinson,
et al'
Appellants;

and

Richard Jackson, Respondent.

The Appellants C A S E.

C A S E.

T *Thomas Ferrand*, the Appellant *Bryan Ferrand*'s Father, being seiz'd of the Mannor of *Flasby*, with the Appurtenances in Fee, and also of a Messuage called *Woodhouse*, with the Lands thereunto belonging in *Flasby* afore said in Tail, in the County of *York* both of the Annual Value of 80 *l.* (the said Premises being mortgaged to one *Lupton* for 200 *l.* with Interest; and to one *Atkinson*, for 500 *l.* with Interest, besides other Debts over and above his Personal Estate, and an annual Payment of 25 *l.* to his Wife during her Life) He by Will, dated 25th of *February*, 1682. gives 500 *l.* to his Daughter *Barbara*, the Respondent's late Wife deceased, to be paid at her Age of 21 Years, that the Respondent had a Daughter by the said *Barbara*.

Will the 25th of *February*, 1682.

Bill filed in *Trinity* Term, 1699

And the Respondent, as Administrator to his late Wife, exhibited his Bill in Chancery, against the Appellants, *Bryan Ferrand*, Son and Heir of *Thomas Ferrand*, *Will. Watkinson*, Executor of the said *Tho. Ferrand*, and *John Watkinson*, praying a Discovery of the real and personal Estate of the Testator *Tho. Ferrand*, and to be paid the 500 *l.* and allowed for the Maintenance of the said Wife.

Bryan Ferrand's Answer.

The Appellant *Bryan* being but five Years old when his Father died, and then under Age, answered by his Guardian, and referred to the Answer of the other Appellant *Will. Watkinson*, who was his Guardian.

William Watkinson's Answer.

Which said *Will. Watkinson*, another of the Appellants answer'd, and gave in a Particular of the Rents and Profits of the real Estate, and also of the personal Estate, and how he disposed thereof, and of the Incumbrances thereon.

John Watkinson's Answer.

John Watkinson, the other Appellant by his Answer admits himself only as a Trustee, in the said Mortgage of 500 *l.* charged on the Estate.

Cause heard the 25th of *January*, Anno 11 *Will.* 3rd Regis.

And the Court referred it to a Master, to take an Account of the Rents and Profits of the real and personal Estate, and to examin what Debts and Incumbrances were on the Estate, and the Value of the Estate, and to make just Allowances.

The Master made his Report the 1st of *February*, 1700.

And found the Value of the Estate at 80 *l.* a Year, the said two Mortgages, and the 25 *l.* per Annum for the Testator's Widow, and upon the Ballance of the Accounts, of the Rents and Profits of the real Estate, as also of the personal Estate, there is found thereby 123 *l.* 13 *s.* 07 *d.* due to the Executor, *William Watkinson*.

The Cause came to be heard upon the Report 17th of *May*, 13 *Will.* 3. Regis.

And the Court decreed, the said Estate forthwith to be sold for the raising the said 500 *l.* to the Respondent *Jackson*, and the Respondent to be allowed 10 *l.* a Year, from his Marriage, for the Maintenance of his Wife *Barbara*, to her Death, and from thence to be as Interest, till the said 500 *l.* should be paid; that *Jackson* should have moderate Costs: But if the Appellants did not comply with the said Decree, then he should have full Interest and Costs; that all Parties shall joyn in the Sale of the Estate.

Deed of Intail, dated the 13th of *May*, 17th *Car.* 1.

That soon after the said Decree, the Appellant *Bryan* was of full Age, and came to the Knowledge of a Deed inrolled, by which Deed it appears, that *Woodhouse* and the Lands thereunto belonging, Part of the said Estate in *Flasby* afore said, of the Value of 33 *l.* per Annum, were purchased by the Appellant *Bryan*'s Grand-father, in Tail: So that the said Lands cou'd not be charged by *Thomas Ferrand*, the Appellant's *Bryan*'s Father's Will, but descended to him as Heir in Tail.

Petition.

That the Appellant *Bryan* petitioned the Court, setting forth the said Matter, but the Decree being inrolled, the Petition was dismiss'd.

Bill of Review.

The Appellants were obliged to bring their Bill of Re-view, and assign'd two Errors, first Error in Fact, viz. the said Deed of Intail, and consequently the said Decree was erroneous, in decreeing the said Intailed Lands to be sold. And 2dly, an Error in Law, appearing in the Body of the said Decree, viz. that there was no Care taken for the Payment of the said Mortgage of 500 *l.* and Interest.

Cause on Bill of Re-view heard 30th *June* last.

And the Bill of Re-view, as to the Error in Fact, was dismiss'd with Costs, tho' the Appellants are advised; the said Deed of Intail was fully proved, and the Affidavit annex'd to the said Bill was sufficient, and not objected against by the Respondent *Jackson* in his Demurrer to the said Bill, or otherwise.

The second Error determined 27th *October* last.

But the 2d Error not being then determined, came on the 27th of *October* last, and then the Court decreed the said Mortgage of 500 *l.* with Interest, shou'd be paid before *Jackson*, and yet decreed, the Appellant *Bryan* to pay Interest at 5 *l.* per Cent. from the time that *Barbara* wou'd have attained the Age of 21 Years, besides Costs; Which by the first Decree was only 10 *l.* a Year for the Interest, with moderate Costs.

Wherefore, the Appellants humbly conceive, the Decree of the 30th of *June* last, to be erroneous, in decreeing the said intailed Lands to be sold.

Also, that the Appellant *Bryan*, ought not to pay Interest and Costs, as by the Decree of the 27th of *October* last: for that it was just to complain of the Defect in the Decree, in not taking care to have the Mortgage-Money first paid.

All which is humbly submitted to the Wisdom of this
High and most Honourable House.

RICH. TURNER.